

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
V.)	CIVIL NO.
)	
CUSTOM CLIMATE CONTROL, INC.)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General, through its undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), hereby files this Complaint and alleges the following:

PRELIMINARY STATEMENT

1. This is a civil action brought pursuant to Section 113(b)(2) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b)(2), against Defendant, Custom Climate Control, Inc. ("Custom Climate"), for its violations of Section 608 of the Act, 42 U.S.C. § 7671(g) and its implementing regulations. Section 608 regulates the use and disposal of chlorofluorocarbons and hydrochlorofluorocarbons ("class I and class II refrigerants").

JURISDICTION, VENUE AND AUTHORITY

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this judicial district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395. Defendant does business in, and these claims arose within, this judicial district.

4. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 305 of the Act, 42 U.S.C. § 7605.

5. Notice of commencement of this action has been given to the State of Florida pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

PARTIES

6. Plaintiff is the United States of America, acting at the request of the United States Environmental Protection Agency ("EPA"), an agency of the United States.

7. Defendant is a corporation organized under the laws of the State of Florida and doing business in this judicial district.

8. Defendant is a "person" as defined by Section 302(e) of the Act, 42 U.S.C. § 7602(e), within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b), and, therefore, is

subject to the provisions of the Act and its implementing regulations.

STATUTORY AND REGULATORY FRAMEWORK

9. The Stratospheric Ozone Protection, National Recycling and Emission Reduction Program, Section 608 of the Act, 42 U.S.C. § 7671(g), was established to reduce the presence of ozone-depleting substances and protect the ozone level in the stratosphere.

10. Section 608 of the Act, 42 U.S.C. § 7671(g), ("Section 608") prohibits any person from knowingly venting or releasing a "Class I or II" refrigerant (or a substitute refrigerant) during the course of maintaining, servicing or repairing the appliance. Pursuant to Section 608, "Class I" substances include chlorofluorocarbons (CFC's), halons, carbon tetrachloride, methyl chloride, and derivative compounds of these constituents, and "Class II" substances are identified as various hydrochlorofluorocarbons (HCFCs). Section 608 of the Act, 42 U.S.C. § 7671(g).

11. Pursuant to Section 608, the Administrator of EPA was authorized to promulgate regulations establishing standards and requirements for the use and disposal of Class I and Class II substances, or their substitutes, (collectively "refrigerants")¹

¹Pursuant to 40 C.F.R. § 82.152, "refrigerant" means, any substance consisting in part or whole of a class I or class II

during the maintenance, service and repair of appliances. Those regulations were promulgated at 40 C.F.R. 82, Subpart F. Section 608 of the Act, 42 U.S.C. §§ 7671(a)(1) and (2).

12. Pursuant to Section 608 of the Act, the regulations promulgated needed to include requirements that -- (A) reduce the use and emission of such substances to the lowest achievable level, and (B) maximize the recapture and recycling of such substances. 42 U.S.C. § 7671(a)(3). The regulations promulgated also needed to establish standards and requirements for the safe disposal of class I and II substances. 42 U.S.C. § 7671(b).

13. Pursuant to 40 C.F.R. § 82.154(a), "no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances. . ." 42 C.F.R. § 82.154(a)(1). Further, "the knowing release of a refrigerant or non-exempt substitute subsequent to its recovery from an appliance shall be considered a violation of this prohibition." 42 C.F.R. § 82.154(a)(2).

14. While 40 C.F.R. § 82.154(a)(2) dictates that "[d]e minimis releases associated with good faith attempts to recycle or recover refrigerants, or non-exempt substitutes, are not subject to this prohibition," the regulation also mandates that

ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.

refrigerant releases shall be considered de minimis only if they occur when: (i) The required practices set forth in 40 C.F.R. § 82.156 are observed, recovery or recycling machines that meet the requirements set forth in 40 C.F.R. § 82.158 are used, and the technician certification provisions set forth in 40 C.F.R. § 82.161 are observed or [if the release occurs in connection with the disposal only of motor vehicle air conditioners or similarly small appliances ("MVACs and MVAC-like appliances")]. 40 C.F.R. § 82.154(a)(2).

15. The required practices set forth in 40 C.F.R. § 82.156 include, but are not limited to, the mandate that "all persons disposing of appliances, except for small appliances, MVACs, and MVAC-like appliances must evacuate the refrigerant, including all the liquid refrigerant, in the entire unit to a recovery or recycling machine certified pursuant to [40 C.F.R. § 82.158].

16. Additionally, 40 C.F.R. § 82.156 mandates that "all persons opening appliances except for MVACs and MVAC-like appliances for maintenance, service, or repair must evacuate the refrigerant, including all liquid refrigerant. . . in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver . . . or a recovery or recycling machine certified pursuant to [40 C.F.R. § 82.158]. A technician

must verify that the applicable level of evacuation has been reached in the appliance or the part before it is opened."

17. Pursuant to 40 C.F.R. § 82.152, in pertinent part, a "technician" is defined as

any person who performs maintenance, service, or repair, that could be reasonably expected to release refrigerants from appliances, except for MVAC's, into the atmosphere. Technicians also means any person who performs disposal of appliances, except for small appliances, MVACs, and MVAC-like appliances, that could be reasonably expected to release refrigerants only if the activity is reasonably expected to violate the integrity of the refrigerant circuit. Activities reasonably expected to violate the integrity of the refrigerant circuit include activities such as attaching and detaching hoses and gauges to and from the appliance to add or remove refrigerant or to measure pressure and adding refrigerant to and removing refrigerant from the appliance. . .

18. Pursuant to 40 C.F.R. § 82.161, "effective May 15, 1995, all technicians must be certified by an approved technician certification program under the requirements of [this rule including] (1) [t]echnicians, as defined in § 82.152, who maintain, service, or repair small appliances must be properly certified as Type I technicians[;] (2) [t]echnicians who maintain, service, or repair medium-, high-, or very high-pressure appliances, except small appliances, MVACs, and MVAC-like appliances, or dispose of medium-, high-, or very high-pressure appliances, except small appliances, MVACs, and MVAC-like appliances, must be properly certified as Type II technicians. . . . [and] (4) [t]echnicians who maintain, service,

or repair low- and high-pressure equipment as described in [40 C.F.R. § 82.161(a)(1), (2) and (3) must be properly certified as Universal technicians.]”

19. Pursuant to 40 C.F.R. § 82.152, an Apprentice is “any person who is currently registered as an apprentice in service, maintenance, repair, or disposal of appliances with the U.S. Department of Labor’s Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau of Apprenticeship and Training).” Apprentices may only be exempt from the technician certification requirement of 40 C.F.R. § 82.161, “provided the apprentice is closely and continually supervised by a certified technician while performing any maintenance, service, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the environment. The supervising certified technician is responsible for ensuring that the apprentice complies with this subpart.”

20. Pursuant to Section 114(a)(1)(G) of the Act , 42 U.S.C. § 7414(a)(1)(G), EPA may require anyone who owns or operates any emission source to provide such “information as the Administrator may reasonably require” to determine whether such person is in violation of Section 608 of the Act.

21. Section 113(b) of the Act, 42 U.S.C. § 7413(b), provides that the Administrator of EPA shall, in the case of a person which is the owner or operator of a major stationary

source, and may, in the case of any other person, whenever such person violates any requirement or prohibition of, inter alia, Subchapter VI (42 U.S.C. § 7671) of the Act, and its implementing regulations, commence a civil action for injunctive relief and to assess and recover a civil penalty of up to \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004.

GENERAL ALLEGATIONS

22. At all relevant times, Custom Climate owns and operates a residential air conditioning repair company located at 13311 60th Street North, Clearwater, Florida 33760.

23. At all relevant times, Custom Climate primarily sells and services residential air conditioning units in the Tampa Bay/St. Petersburg, Florida area.

24. Custom Climate is subject to provisions of Title VI of the Clean Air Act, Stratospheric Ozone Protection, and the regulations codified in 40 C.F.R. 82, Subpart F - Recycling Emissions Reduction Program.

25. Custom Climate employs two different types of technicians: preventive maintenance technicians ("pm techs") and installers. The job duties of both types of Custom Climate technicians (pm techs and installers) entail work where

refrigerants could possibly be release from air conditioning appliances.

26. Custom Climate's pm techs make visits to customers' homes to assess the condition of air conditioning units in these homes. During the home visits, Custom Climate pm techs take refrigerant pressure readings and may add refrigerant to residential air conditioning systems by attaching and detaching hoses and gauges to and from such appliances.

27. Custom Climate's installers repair and install air conditioning systems at their customers' homes.

28. After a Custom Climate installer exchanges a customer's air conditioning unit with a new unit, the installer then takes the customer's old unit back to Custom Climate's facility and sends that unit to a scrap recycler.

29. Both Custom Climate's pm techs and installers are required to be certified by EPA since they either maintain, service, repair or dispose of medium-, high-, or very high-pressure appliances containing refrigerants.

30. On information and belief, Custom Climate's business practices include "venting," or releasing, of refrigerant from air conditioning appliances in violation of Section 608 of the Act.

31. On September 27 and 28, 2005, EPA conducted a two-day inspection of the Custom Climate facility located at 13311

60th Street North, Clearwater, Florida 33760. The general purpose of the inspection was for EPA to conduct a review of Custom Climate's compliance with Section 608 of the Act and its implementing regulations. During the inspection, EPA representatives held meetings with Custom Climate's management and other employees, reviewed some of the company's business documents, and verified other pertinent information regarding how Custom Climate operates its business.

32. On several occasions between September 23, 2003 and October 13, 2005, pursuant to Section 114 of the Act, EPA sent information request letters to Custom Climate, seeking information relating to Custom Climate's business operations including, but not limited to, information of the company's employees who work on refrigerant-containing appliances, copies of its technicians' certification cards, information about the company's servicing of appliances involving refrigerant, and refrigerant reclamation records. EPA sought this information from Custom Climate so that it may make determinations of the company's compliance with Section 608 of the Act.

33. Custom Climate, through its attorney, submitted delayed and incomplete responses to EPA's information requests.

FIRST CLAIM FOR RELIEF

34. Paragraphs 1 through 33 are incorporated herein by reference.

35. On various occasions from at least June 3, 2002 and until October 15, 2007, Custom Climate employed uncertified technicians and installers to maintain, service, repair and/or dispose of air conditioning appliances in violation of 40 C.F.R. § 82.161.

36. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), as amended, Custom Climate is liable for assessment of a civil penalty of up to \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004.

SECOND CLAIM FOR RELIEF

37. Paragraphs 1 through 33 are incorporated herein by reference.

38. On various occasions from at least July, 2002 and until October 15, 2007, Custom Climate technicians and installers knowingly "vented" or released refrigerants from air conditioning appliances during the course of maintaining, servicing, repairing or disposing of such appliances in violation of 40 C.F.R. § 82.154(a).

39. Pursuant to Section 113(b) of the Act, 42 U.S.C.

§ 7413(b), as amended, Custom Climate is liable for assessment of a civil penalty of up to \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004.

THIRD CLAIM FOR RELIEF

40. Paragraphs 1 through 33 are incorporated herein by reference.

41. On various occasions from at least July, 2002 and until October 15, 2007, Custom Climate failed to use certified recovery equipment to capture refrigerant gas from air conditioning appliances in violation of 40 C.F.R. § 82.156.

42. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), as amended, Custom Climate is liable for assessment of a civil penalty of up to \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004.

FOURTH CLAIM FOR RELIEF

43. Paragraphs 1 through 33 are incorporated herein by reference.

44. From October 10, 2003 to October 15, 2007, Custom Climate failed to timely and fully comply with EPA's information

requests submitted to the company in violation of Section 114 of the Act.

45. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), as amended, Custom Climate is liable for assessment of a civil penalty of up to \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

1. Assess a civil penalty and enter a judgment against Custom Climate and in favor of the United States, in an amount up to \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004; and
2. Enjoin Custom Climate from violating both Section 608 of the Act and its implementing regulations.
3. Grant such other relief as this Court may deem just and proper.

Respectfully submitted,

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